

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEFFERY R. WERNER

and

BRIAN R. WOLFF

and

JUDITH S. WOLFF

and

## INCREDIBLE FEATURES, INC.

*Plaintiffs,*

V.

XINHUA NEWS AGENCY, INC.,

*Defendant.*

## COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiffs Jeffery R. Werner (“Mr. Werner”), Brian R. Wolff (“Mr. Wolff”), Judith S. Wolff (“Mrs. Wolff”), and Incredible Features, Inc. complain against Defendant Xinhua News Agency (“Xinhua”) seeking monetary relief, alleging as follows:

1. The address of each named party is as follows:

Jeffery R. Werner, 4910 1/4 McConnell Ave., Los Angeles, CA 90066;

Brian R. Wolff, 321 Richard Road, Yardley, PA 19067;

Judith S. Wolff, 321 Richard Road, Yardley, PA 19067;

Incredible Features, Inc., 4910 ¼ McConnell Ave., Los Angeles, CA 90066; and

Xinhua News Agency, 1540 Broadway (45th Street) New York, NY 10036.

2. This is an action for direct and contributory copyright infringement of professional photographers' works arising under Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, and for removing copyright management information from the work in violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over the copyright infringement claim, with jurisdiction vested in this Court pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (acts of Congress relating to copyrights)

4. This Court has general personal jurisdiction over the Defendant because it does continuous and systematic business in Manhattan, New York City, the location of one of its editorial offices.

5. Venue is proper pursuant to 28 U.S.C. § 1400(a) (venue in copyright actions) as Defendant may be found in this District where it is subject to the Court's jurisdiction. In addition, venue is proper under 28 U.S.C. 1391(1) (Defendant's residence).

### **THE PARTIES**

6. Plaintiff, Jeffery R. Werner, is an individual who resides in Los Angeles, California. He is the owner of some of the copyrights to the photographs that are the subject of this action.

7. Plaintiff, Brian R. Wolff, is an individual who resides in Yardley, Pennsylvania. He is the owner of some of the copyrights to the photographs that are the subject of this action.

8. Plaintiff, Judith S. Wolff, is an individual who resides in Yardley, Pennsylvania. She is the owner of a copyright to the photographs that are the subject of this action.

9. Plaintiff, Incredible Features, Inc., is a photographic features syndicator located in Los Angeles, California. It licenses and owns some of the copyrights of Jeffery Werner and others.

10. Defendant, Xinhua News Agency (“Xinhua”), is the state-run press agency of the People’s Republic of China. The corporate status of its North American regional bureau, headquartered in New York, is presently unknown. The New York bureau is the regional headquarters of the North American region which oversees Xinhua offices in Washington, D.C., Chicago, Los Angeles, and Ottawa.

11. Xinhua describes itself on its website as one of the world’s “most influential news portals”. An investigative report by Reporters Without Borders described Xinhua as “the world’s largest press agency” and reported that it had become a major player in the field of international news” due to its “huge Internet visibility (Xinhuanet.com puts out news in seven languages) and free distribution of its reports in many countries.” Gautier Battistella, “The World’s Biggest Propaganda Agency” (2005)

[https://rsf.org/sites/default/files/Report\\_Xinhua\\_Eng.pdf](https://rsf.org/sites/default/files/Report_Xinhua_Eng.pdf) The report found that plagiarism plays a large role in the operation of the agency which, in its overseas bureaus, “confines itself to picking up reports from international agencies or articles from the local press, which it summarizes, often clumsily, and mixing in the regime’s political orientation.” *Id.* at 4.

12. Xinhua combines its role as the voice of the Chinese Communist Party and Government with a keen interest as a media giant in profiting from the exploitation of creative content. A recent study of employees and officials in its New York office found that “‘user’ and ‘profit’ were mentioned many times as the key words... It signifies a concept of marketization.... In 2002, Xinhua adopted a comprehensive new system for its business

management, centering on the sale of news and information services, with newspapers/magazines and other businesses as its affiliates.” Jingwei Dong, *A Comparative Study of Xinhua and CNN’s Overseas News Bureaus* (2012) (M.A. Thesis, U. of Florida) at 54-55.

13. Xinhuanet is the online news service of Xinhua News Agency. It claims to “release[] important news about China and the world around the clock without stop by relying on the agency’s worldwide information-gathering network.... Xinhuanet provides news services in six languages -- Chinese, English, Spanish, French, Russian and Arabic -- to netizens in more than 200 countries and regions, garnering 800 million hits and 80 million page views per day.” [http://news.xinhuanet.com/english/2007-08/31/content\\_6637522.htm](http://news.xinhuanet.com/english/2007-08/31/content_6637522.htm) Its ranking “places Xinhuanet third among the world’s news websites, narrowly trailing BBC and CNN, but far ahead of Reuters, The Associated Press and AFP (Agence France-Presse).” *Id.* In addition to its international “netizen” audience, Xinhuanet “is the primary provider of major and authoritative news to [China’s] websites. A large number of its news stories are carried or reproduced by many news websites and government portals in China and the world, as well as by search engines such as Google and Baidu.” *Id.* Xinhuanet “has adopted an all-media approach in its release of news, including text, photos, graphics, audio, video, short message, MMS, WAP, electronic magazine and RSS.” *Id.*

14. On information and belief, Xinhua News Agency misappropriates many or all of the images it exploits pursuant to its “all-media approach” on Xinhuanet without procuring licenses from content creators and copyright owners, and without payment to creators.

15. Despite a business model that is predicated on routine and systematic copyright infringement, Xinhua News Agency asserts its intellectual property rights in its Xinhuanet

publications. Xinhuanet pages carry a copyright notice stating: “All rights reserved.

Reproduction in whole or in part without permission is prohibited.” *Id.*

## FACTS

### **Jeffery R. Werner is a Professional Photographer**

16. Mr. Werner has over 35 years of experience as a professional photographer. His work has appeared in magazines world-wide as covers, features, and editorial coverage in publications such as *Life*, *Time*, *Newsweek*, *People*, *Marie Claire*, *FHM*, *Smithsonian*, *Playboy*, *Maxim*, *In Touch*, *Daily Mail*, *Penthouse*, *Psychology Today*, *Stern*, *Country Weekly*, and *Page Six Sunday Magazine (NY Post)* and many others. He has had over 100 double-page spreads in the *National Enquirer*. His photographs of amazing stunts, performed with motorcycles, airplanes, trains, and other vehicles, were featured on such television shows as: *That’s Incredible!*, *The World’s Greatest Stunts*, *Stuntmasters*, *Guinness World Record Spectaculars*, *Ripley’s Believe It Or Not*, and *I Dare You*. Werner’s portfolio of images has also been featured in a 16-page spread in both French and Italian photo magazines, with pickups appearing in *Panorama* magazine (Netherlands), *Stern* (Germany), *Photo District News* (U.S.), *Mad Magazine* (France), and the 25th anniversary issue of *New Look* magazine. Many of his iconic photographs were also chosen to be published in the TALK/MIRIMAX coffee table book *The National Enquirer, Thirty Years of Unforgettable Images*. Mr. Werner is a member of the Los Angeles Press Club and the American Society of Media Photographers, and is the CEO of an editorial photo syndication agency, Incredible Features, Inc.

17. Mr. Werner has developed a specialty in photographing stunts and stuntmen and women. His attention to detail, even while filming dangerous stunts with his signature 15-camera remote photography set-up, has exposed him to the danger involved in getting very close

to the action. Capturing these explosive photo sequences landed him the exclusive honor of being the only still photographer inducted in the Stuntworld Hall of Fame. Featured on a segment of “*The Adventures*” TV show, he was referred to as the “da Vinci of daredevil photography” (<https://helldriversmovie.wordpress.com/2008/11/10/incredible-stunts-book/>). French *Photo* called him the “incredible but true photographer” and Caesar’s Palace chose him as the official photographer for Robbie Knieval’s motorcycle jump across fountains. Those images were licensed by numerous magazines and/or TV outlets around the world, including *Life* and *Sports Illustrated*. Werner’s body of stunt photography is displayed in the 2009 coffee table book, Incredible Stunts: The Chaos, Crashes and Courage of the World’s Wildest Stuntmen and Daredevils (ISBN-13: 978-0-9796349-9-4).

18. Mr. Werner is also well-known for his work with exotic animals, celebrities in their homes, remote aboriginal peoples, sideshow eccentricities, and people who have overcome incredible obstacles. Mr. Werner has a growing “outsider art” reputation, and his work was the subject of a retrospective gallery exhibition at the Annenberg Space for Photography in Los Angeles in 2009. Vince Streano, photographer and President Emeritus of the American Society of Media Photographers, has said that “Jeff is the Diane Arbus of the 21st century” because he crosses social lines to celebrate the odd - rather than belittle his subjects.

19. The uniqueness of Mr. Werner’s portfolio, and his talent, have resulted in substantial licensing opportunities throughout the years on which he relies to research and fund future photo shoots and to pay himself and his staff at Incredible Features, Inc. Mr. Werner has always maintained the publishing rights to his works, knowing they would provide the revenue to produce his next story. Mr. Werner relies on income generated from licensing his photograph for his living. Plaintiff employs a staff dedicated to researching new opportunities for photo

shoots, as well as managing, monetizing, and policing the intellectual property of Plaintiff's portfolio.

20. Unfortunately, a multitude of unauthorized works by Mr. Werner are now on the internet as a result of theft. The magnitude of this theft is a baleful compliment to his talents: web pirates, who pay nothing for stolen content, select the best.

21. Mr. Werner's syndication company, Incredible Features, Inc., which licenses his work, has now been forced to add additional staff to discover piracy and to help collect the revenues due to him from copyright infringements. The policing of his intellectual properties has become a cumbersome and expensive task which adds to the cost of every image produced. As in the past, despite the constant struggle against internet piracy, Werner still relies on these revenues to produce his next incredible story and to pay his staff and vendors.

**Brian R. Wolff is a Professional Photographer**

22. Mr. Wolff is a professional free-lance photographer with a principal place of business and residence in Yardley, Pennsylvania. He has almost 40 years of experience as a professional photographer whose clients have included the *Los Angeles Times*, *Time Magazine*, *Paris Match*, the US Navy, Lockheed Martin, BAE Systems (Formerly United Defense), the Navy League, Raytheon, DRS Technologies, and many other editorial and commercial clients. He and his wife and co-plaintiff, Judith Wolff, were featured on an episode of the PBS documentary series "Innovations" titled "Get the Picture."

<https://www.youtube.com/watch?v=ddGPm7yQqHI>

23. Mr. Wolff's images have also appeared world-wide in magazines such as *Smithsonian*, *Life*, *Paris-Match*, *Le Figaro*, and *Stern* as covers, feature editorials and advertisements. Mr. Wolff's photographic subjects are diverse and have included Barbie dolls

for the cover of *Smithsonian*, portraits of noted celebrities, prominent scientists and authors, the landing of a helicopter in an active volcano, and documenting all aspects of the U.S. military as the Photographer in Residence for the U.S. Naval Institute Press. He has developed a market niche as a photographer of naval subjects, defense industries and high technology, and he licenses his work for a variety of uses including Annual Reports of corporations in the defense industry. Mr. Wolff's works are commercially licensed. Mr. Wolff has also published two photographic books on the U.S. Navy. One, titled From The Sea: The U.S. Navy And Marine Corps, Into The 21st Century (Osprey Publishing, Ltd. 1997), was co-authored with John Alexander, Commander USN, Ret. The second, Riders Of The Storm: A Photographic Tribute To America's Surface Warriors (International Intellectual Property, Inc., 2000), was authored by Mr. Wolff with an introduction by Michael G. Mullen, Admiral, USN, Ret., later 17th Chairman of the Joint Chiefs of Staff.

24. Throughout his career, Mr. Wolff was diligent in registering the copyright in his works. He carefully restricted the scope of licenses regarding time of use, kinds of uses permitted (e.g., print only, electronic, editorial, advertising, etc.), and often in geographic territory, because he required additional payment from licenses for additional publication rights in order to stay in business as an independent photographer. Mr. Wolff strives to enforce his property rights in an effort to monetize the work product of his career.

**Judith Wolff is a Photographer and Production Manager**

25. Since 1982, Judy Wolff has worked as a photographic production manager, stylist, photo editor, syndicator, and studio manager, working along with husband, Brian Wolff in International Intellectual Property, Inc. She has been credited as stylist in *Smithsonian* magazine and has been responsible for production of photo shoots around the world from Japan



to Russia for magazines such as *Le Figaro*, *Stern*, *Penthouse*, *Paris Match*, and *New York Magazine*. She was featured along with Brian Wolff in a PBS show, ‘Innovations’ on the art of photography. Most recently, she co-photographed, and co-produced an in-depth story on the International Gay Rodeo Association which took her to three states to complete a video and still photography which was published in the *Daily Mail*.

**Infringement of Werner’s Breanna Bond Images**  
**(One Registration; Nine Images Infringed; Nine CMI Removals)**

26. On or about October, 2013, Mr. Werner created a photo feature about Breanna Bond, an 11 year old girl who achieved great weight loss through diet and exercise, and was able to compete in the Junior Olympic Games as a freestyle swimming medal contestant.

27. Mr. Werner registered his work with the Copyright Office on January 15, 2014 as VAu 1-157-618 (the “Bond Protected Work”). See certificate and relevant deposits at Exhibit “1.”

28. Werner’s Breanna Bond photos were licensed to magazines, newspapers and/or TV outlets including *The Daily Mail* and *In Touch*..

29. Nine of the photos were published in the *Daily Mail* with copyright management information inscribed in the images. See Exhibit “2.”

30. On February 20, 2014, Xinhua News Agency posted to its website a feature about Breanna Bond that published nine images from the Bond Protected Work (the “Bond Infringing Work”). The nine images on pages 1/8 (right), 2/8, 3/8, 4/8, 5/8, 6/8, 7/8 are owned by Mr. Werner. See Exhibit “3.”

31. On information and belief, Xinhua copied the images from *The Daily Mail*.

32. Xinhua republished Werner’s works with the copyright management information removed.

33. The Bond Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated links to other Xinhua articles.

34. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Bond Protected Work.

35. The infringed images from the Bond Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "4."

36. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Bond Protected Work.

**Infringement of Werner's Coyote as Household Pet Images**  
**(One Registration; Eleven Images Infringed; Eleven CMI Removals)**

37. On or about June, 2013, Mr. Werner created a photo feature about a family that reared a pet coyote.

38. Mr. Werner registered his work with the Copyright Office on December 17, 2013 as VAu 1-920-166 (the "Coyote Protected Work"). *See* certificate and relevant deposits at Exhibit "5."

39. Werner's Coyote photos were licensed to magazines, newspapers and/or TV outlets around the world, including *Daily Mail* and *Daily Record*.

40. Fourteen of the photos were published on January 14, 2014 by the *Daily Mail* with copyright management information inscribed in the images. *See* Exhibit "6." Werner does not own the copyright for the two images of the coyote as a cub.

41. On January 16, 2014, Xinhua News Agency posted to its website an English-language feature titled "U.S. family raise pet wolf as pet for 3 years". That feature published copies of 11 images from the Coyote Protected Work (the "Coyote Infringing Work"). *See* Exhibit "7."

42. On information and belief, Xinhua copied the Coyote images from *The Daily Mail* or from another Chinese site, Huanqui.com which published the same images only hours before Xinhuanet.com, crediting the *Daily Mail*.

43. Xinhua republished Werner's works with the copyright management information removed. In its place, Xinhua added a gutter credit with false copyright management information crediting "huanqiu.com" as the as the author of Mr. Werner's images.

44. Huanqiu.com is, on information and belief, an internet platform established in 2007 by the *Global Times*, a publication under the auspices of the *People's Daily* newspaper owned by the Chinese Communist Party whose staff are based in Chinese diplomatic missions worldwide. On information and belief, the *People's Daily* and *Xinhua News Agency* have extensive connections and the *People's Daily* draws approximately 25 percent of its content from *Xinhua*.

45. The Coyote Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

46. The infringed images from the Coyote Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "8."

47. Neither Mr. Werner nor his licensing agent, Incredible Features, Inc., ever granted Xinhua News Agency (or huanqiu.com) any license to copy the Coyote Protected Work.

**Infringement of IFI's Eye Jewelry Images**  
**(One Registration; Eleven Images Infringed; Eleven CMI Removals)**

48. On or about February, 2014, Incredible Features commissioned a photo feature about a woman having surgery to put jewelry in her eye. The photographer, Joel Sheakoski, executed a written work for hire agreement by which IFI became the copyright proprietor.

49. IFI registered its work with the Copyright Office on March 5, 2014 as VAu 1-165-419 (the “Eye Jewelry Protected Work”). *See* certificate and relevant deposits at Exhibit “9.”

50. Eleven of the images were published on March 9, 2014 by the *Daily Mail* with copyright management information inscribed in the images. *See* Exhibit “10.”

51. On March 10, 2014, Xinhua News Agency posted to its website a feature about the eye jewelry. That feature published copies of all eleven images from the Jewelry Protected Work (the “Eye Jewelry Infringing Work”). *See* Exhibit “11.”

52. On information and belief, Xinhua copied the Eye Jewelry images from *The Daily Mail*.

53. Xinhua republished Werner’s works with the copyright management information removed.

54. The Jewelry Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

55. The infringed images from the Jewelry Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “12.”

56. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Jewelry Protected Work.

**Infringement of Werner’s Longest Nails Images**  
**(One Registration; Six Images Infringed Post-Registration; Six CMI Removals)**

57. On or about July, 2011, Mr. Werner created a photo feature about Chris Walton, a Las Vegas woman who holds the Guinness World Record for having the longest finger nails.

58. Mr. Werner registered his work with the Copyright Office on March 31, 2014 as VA 1-904-426 (the “Nails Protected Work”). *See* certificate and relevant deposits at Exhibit “13.”

59. Werner’s Longest Finger Nails photos were licensed to magazines, newspapers and/or TV outlets around the world, including the *Telegraph*, *Daily Mail*, *ITV Loose Women*, and *The Sun*.

60. Six of the nails images were published by the *Daily Mail* on November 28, 2011. *See* Exhibit “14.”

61. On November 30, 2011, Xinhua News Agency posted to its English-language website a feature titled “Woman grows 6-meter long finger nails in 18 years”. That feature published copies of three images from the Nails Protected Work that had appeared in the *Daily Mail*. Xinhua later reposted the story on October 14, 2013 to its Spanish-language edition using three additional images by Werner as well as images by another photographer that appeared in a *Daily Mail*’s update of the story (together, the “Nails Infringing Work”). *See* both English and Spanish infringements in Exhibit “15.”

62. On information and belief, Xinhua copied the Longest Nails images from the *Daily Mail* or from *China Daily* which published the stolen article only hours before *Xinhua* (attributing it to the *Daily Mail* but removing IFI’s CMI).

63. Xinhua republished Werner’s works with the copyright management information removed. It added its own false CMI crediting *China Daily* as the author of Mr. Werner’s images.

64. The Nails Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

65. The infringed images from the Nails Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "16."

66. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Nails Protected Work.

**Infringement of Werner's Big Mo Biceps Images**  
**(One Registration; Eleven Images Infringed)**

67. On or about March, 2013, Mr. Werner created a photo feature about Moustafa Ismail, or "Big Mo," who has the world's largest biceps.

68. Mr. Werner registered his work with the Copyright Office on March 18, 2013 as VAu 1-135-290 (the "Big Mo Protected Work"). *See* certificate and relevant deposits at Exhibit "17."

69. Werner's Big Mo photos were licensed to magazines, newspapers and/or TV outlets around the world, including *Daily Mail*, *Daily Star* (Sunday), and *National Examiner*.

70. Eleven of the photos were published on March 31, 2013 by the *Daily Mail*. *See* Exhibit "18."

71. On April 7, 2013, Xinhua News Agency posted to its English-language website a feature titled "'Popeye in Real Life' with largest biceps in world." That feature published copies of all eleven of the images from the Big Mo Protected Work (the "Big Mo Infringing Work"). *See* Exhibit "19."

72. Mr. Werner's copyright management information from the *Daily Mail* appears in the Big Mo Infringing Work, indicating the source of the stolen images.

73. The Big Mo Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated thumbnails linking to other Xinhua articles.

74. The infringed images from the Big Mo Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "20."

75. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Big Mo Protected Work.

**Infringement of Werner's Backwards Runner Images**  
**(One Registration; Six Images Infringed; Six CMI Removals)**

76. On or about March, 2014, Mr. Werner created a photo feature about Laura Cattivera who suffers from a rare neurological disease that makes it painful for her to run forward in a straight line. She has thus taken to running backwards.

77. Mr. Werner registered his work with the Copyright Office on March 12, 2014 as VAu 1-165-412 (the "Runner Protected Work"). *See* certificate and relevant deposits at Exhibit "21."

78. Werner's Backwards Runner photos were licensed to magazines, newspapers and/or TV outlets around the world, including *Daily Mirror* and *Daily Mail*.

79. Six of the photos were published on May 20, 2014 by the *Daily Mail* with copyright management information inscribed in the images. *See* Exhibit "22."

80. On May 22, 2014, Xinhua News Agency posted to its website a feature about Laura Cattivera. That feature published copies of six of the images from the Runner Protected Work (the "Runner Infringing Work"). *See* Exhibit "23."

81. On information and belief, Xinhua copied the Backward Runner images from the *Daily Mail*.

82. Xinhua republished Werner's works with the copyright management information removed.

83. The Runner Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

84. The infringed images from the Runner Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "24."

85. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Runner Protected Work.

**Infringement of Werner's Shotgun Wedding Images**  
**(One Registration; One Image, One CMI Removal)**

86. On or about December, 2012, Mr. Werner created a photo feature about two Las Vegas weddings where the brides and grooms displayed and posed with firearms during the ceremony.

87. Mr. Werner registered his work with the Copyright Office on June 24, 2013 as VAu 1-926-438 (the "Shotgun Wedding Protected Work"). *See* certificate and relevant deposits at Exhibit "25."

88. Werner's Shotgun Wedding photos were licensed to magazines, newspapers and/or TV outlets around the world, including *Daily Mail*, *The Guardian*, *The Sun*, and *Penthouse*.

89. Ten of the photos were published on January 6, 2013 by the *Daily Mail* with copyright management information inscribed in the images. *See* Exhibit "26."



90. On August 23, 2013, Xinhua News Agency posted to its website a feature about offbeat weddings. That feature published a copy of one of the images from the Wedding Protected Work (the “Wedding Infringing Work”) (the seventh image). *See* Exhibit “27.”

91. On information and belief, Xinhua copied the Shotgun Wedding image from *The Daily Mail* or from *Global Network Integrated*, which it falsely credited as the author of Mr. Werner’s work.

92. Xinhua republished Werner’s works with the copyright management information removed.

93. The Wedding Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

94. The infringed images from the Wedding Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “28.”

95. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Wedding Protected Work.

**Infringement of Werner’s Giant George Images**  
**(One Registration; Four Images Infringed; One CMI Removal)**

96. On or about November, 2009, Mr. Werner conducted a photo shoot of Giant George, a seven-foot long Great Dane who at the time was being discussed as a contender for the title of “World’s Tallest Dog” bestowed by the Guinness Book of World Records. Plaintiff and his staff researched, contacted and negotiated the terms of the photo shoot with Giant George’s owner, and traveled to Tucson, Arizona, for the photo shoot, all at Incredible Features’ expense. The photo shoot resulted in a collection of photographs featuring Giant George (the “Giant George Protected Work”).

97. The Giant George photos were registered by Mr. Werner with the U.S. Copyright Office, Registration No. VAu 1-005-177, on November 11, 2009 (the “Giant George Protected Work”). *See* certificate and relevant deposits at Exhibit “29.”

98. Mr. Werner licensed the Giant George photographs to such media outlets as *The Daily Mail*, *The Oprah Show*, *Maxim Magazine*, *National Geographic Reader*, *In Touch Weekly*, *National Examiner*, *QUO Magazine* in Spain, and *30 Millions d’Amis*, Europe’s premier animal magazine.

99. Four of the Giant George images were published on December 23, 2009 in the *Daily Mail* with copyright management information inscribed in the images. *See* Exhibit “30.”

100. On December 23, 2009, Xinhua News Agency posted to its website a feature about Giant George. That feature published copies of four of the images from the Giant George Protected Work (the “First Giant George Infringing Work”). *See* Exhibit “31.”

101. Xinhua republished the Giant George Infringing Work with Mr. Werner’s copyright management information from the *Daily Mail* still displayed, indicating the source of the stolen images.

102. The First Giant George Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

103. The infringed images from the First Giant George Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “32.”

104. In early February 2010, Giant George was declared by the Guinness Book of World Records as the world’s tallest dog. When Giant George later died, three images from the Giant George Protected Work were republished on October 24, 2013, in a feature appearing in

the *Daily Mail*. See Exhibit “33.” The images again contained Mr. Werner’s copyright management information.

105. On October 26, 2013, Xinhua News Agency posted to its English language website a feature titled “World’s tallest dog, Giant George, dies”. That feature published copies of one of the images from the Giant George Protected Work (the “Second Giant George Infringing Work”). The image on page 3 of the Infringing Work is owned by Mr. Werner. See Exhibit “34.”

106. The Second Giant George Infringing Work was, on information and belief, copied from the *Daily Mail* post dated October 24, 2013.

107. The Second Giant George Infringing Work was published with the copyright management information removed. In its place, the Xinhua News Agency published false copyright management information crediting “crienglish” as the author of Mr. Werner’s image. Crienglish is, on information and belief, the official English-language website of China Radio International, the People’s Republic of China’s state-owned international radio broadcaster.

108. The Second Giant George Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

109. The infringed images from the Second Giant George Protected Work were copied to and reside on Xinhua News Agency’s own server. See Exhibit “35.”

110. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency (or Crienglish) any license to copy the Giant George Protected Work.

**Infringement of Werner's Amazon Eve Images**  
**(One Registration; Five Images Infringed; Five CMI Removals)**

111. In or about October, 2010, Mr. Werner created a photo feature and video film about Erika Ervin, known professionally as Amazon Eve, a 6'8" tall transgender model, fitness trainer, and actress who, in 2011, was identified as the world's tallest fashion model by the Guinness Book of World Records.

112. Mr. Werner registered his works with the Copyright Office on October 25, 2010 as VAu 1-045-923 (the "Eve Protected Work"). See certificate and relevant deposits at Exhibit "36."

113. Werner's Amazon Eve photos were licensed to magazines, newspapers and/or TV outlets around the world, including *Daily Telegraph*, *The Sun*, *Daily Express*, *National Examiner*, *Daily Sport*, *Daily Mirror*, *T-Online*, *Guinness World Records Book*, and *ITV Daybreak*.

114. Seven of the photos were published on December 29, 2010 in the *Daily Mail* with copyright management information inscribed in the images. See Exhibit "37."

115. On April 27, 2011 Xinhua News Agency posted to its website an article about Erika Ervin. That post republished four images from the Eve Protected Work (the "Eve Infringing Work.") See Exhibit "38."

116. On information and belief, Xinhua copied the Amazon Eve images from *The Daily Mail* or from the website French.china.org.cn which posted a pirated version of the work on January 11, 2011.

117. Xinhua republished the Eve Infringing Work with Mr. Werner's copyright management information removed.

118. The Eve Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

119. The infringed images from the Eve Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "39."

120. On August 19, 2011, Xinhua News Agency posted to its English language website another article about Erika Ervin (the "Second Eve Infringing Work"). *See* Exhibit "40." That post republished a fifth image from the Eve Protected Work on page 4 of 6

121. Xinhua republished the Second Eve Infringing Work with Mr. Werner's copyright management information removed. In its place Xinhua inserted false copyright management information crediting "french.china.org.cn" as the author of Mr. Werner's images.

122. The infringed images from the Second Eve Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "41."

123. The Second Eve Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

124. On November 15, 2011, Xinhua News Agency posted to its website a third article about Erika Ervin. That post republished one additional image from the Eve Protected Work, on page 5 of 10, in addition to again recopying two images (at pages 2 and 3 of 10) that it had previously copied (the "Third Eve Infringing Work"). *See* Exhibit "42."

125. Xinhua republished these last two images *without* removing Mr. Werner's copyright management information from the *Daily Mail*, indicating the source of the stolen images.

126. Again, the sixth and seventh images copied in the Third Eve Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "43."

127. The Third Eve Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

128. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency (or french.china.org.cn) any license to copy the Eve Protected Work.

**Infringement of Werner's Snuggery Images**  
**(One Registration; Three Images Infringed; Three CMI Removals)**

129. In or about August, 2012, Mr. Werner discovered a story on Jacqueline Samuel, a woman in Rochester, New York who had started a unique new business of cuddling clients. This new business was named "The Snuggery." Mr. Werner negotiated a contract with Ms. Samuel that gave him the right to a photo shoot and rights to exploit images of The Snuggery.

130. In September 2012, Mr. Werner flew to Rochester with an assistant to hold a photoshoot at The Snuggery. He hired two local assistants, a makeup artist, and two models to depict Snuggery clients.

131. Mr. Werner registered his work with the Copyright Office on October 25, 2012 as VAu 1-119-467 (the "Snuggery Protected Work"). *See* certificate and relevant deposits at Exhibit "44."

132. The Snuggery photos were licensed to magazines, newspapers and/or TV outlets around the world, including *Inside Edition*, *In Touch Magazine*, *National Examiner*, *the Sun*, *The Daily Mail*, and *ABC News*. In all cases, Mr. Werner's images were published by his licensees with copyright management information inscribed.

133. Four of the photos were published on October 28, 2012 in a Latvian publication that licensed from Mr. Werner's European agent, Bulls Press. *See* Exhibit "45."

134. On November 1, 2012, Xinhua News Agency posted to its website a feature that published copies of three images from the Snuggery Protected Work (the "Snuggery Infringing Work.") *See* Exhibit "46."

135. That infringing publication removed the copyright management information from the image that appeared in the Latvian publication crediting the photos to the Bulls Press agency.

136. The Snuggery Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

137. The infringed images from the Snuggery Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "47."

138. On May 15, 2015, Xinhua News Agency republished the Snuggery photos in a second infringing publication (a republication of the first) and it again copied the three images to a different address on its server.

139. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Snuggery Protected Work.

**Infringement of Werner's Stacy Herald Images**  
**(Two Registrations by Werner; Five Images by Werner Infringed; One Werner CMI Removal; One Registration by IFI; One Image by IFI Infringed)**

140. On or about the late summer and early fall, 2009 Mr. Werner created a photo feature recording the preparation for child birth of Stacy Herald, an extremely small woman who successfully gave birth to three children despite medical warnings against giving birth.

141. Mr. Werner registered his images of Mrs. Herald with the Copyright Office on October 29, 2009 as VAu 1-012-243 (the “First Herald Protected Work”). *See* certificate and relevant deposits at Exhibit “48.”

142. On or about December, 2009 Mr. Werner created a photo feature recording the delivery of Stacy Herald’s child in a hospital.

143. Incredible Features registered its images of Mrs. Herald with the Copyright Office on December 21, 2009 as VAu 1-009-696 (the “Second Herald Protected Work”). *See* certificate and relevant deposits at Exhibit “49”

144. On or about the spring of 2010 Mr. Werner created a photo feature recording the home life of Stacy Herald’s family.

145. Mr. Werner registered his images of Mrs. Herald with the Copyright Office on June 7, 2010 as VAu 1-028-944 (the “Third Herald Protected Work”). *See* certificate and relevant deposits at Exhibit “50.”

146. Mr. Werner’s First Stacy Herald photos generated interest. The October 2009 images were licensed to magazines, newspapers and/or TV outlets around the world, including the *Daily Mail*, *The Sun*, *Maury Povich Show*, *Inside Edition*, and *E! Entertainment Living*. Four of the 2009 First Herald Protected Works photos were published on November 9, 2009 in the *Daily Mail*. *See* Exhibit “51” Those images were inscribed with copyright management information identifying Mr. Werner’s former licensing agent, Barcroft Media.

147. On November 11, 2009, Xinhua News Agency posted to its website a feature that published copies of two of the four images from the First Herald Protected Work that appeared in the *Daily Mail*. The same day Xinhua News Agency posted to its website a second feature that published copies of the other two of the four images from the First Herald Protected Work that



appeared in the *Daily Mail*. To simplify, these simultaneous publications are treated as one infringing work (the “First Herald Infringing Work.”). *See* Exhibit “52.”

148. That infringing publication still displayed the copyright management information from the *Daily Mail*, indicating the source of the stolen images.

149. The infringed images from the First Herald Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “53.”

150. Four of the December 2009 Second Herald Protected Works photos were published on December 8, 2009 in the *Daily Mail*. *See* Exhibit “54.”

151. Those images were inscribed with Incredible Feature’s copyright management information.

152. On December 8, 2009, Xinhua News Agency posted to its website a feature that republished all four of the images from the Second Herald Protected Work that appeared in the *Daily Mail* the same day (the “Second Herald Infringing Work.”) *See* Exhibit “55.”

153. That infringing publication still displayed the copyright management information from the *Daily Mail*, indicating the source of the stolen images.

154. The infringed images from the Second Herald Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “56.”

155. Four of the June 2010 Third Herald Protected Works photos were published on July 6, 2010, in the *Daily Mail*. *See* Exhibit “57.” Those images were inscribed with Incredible Feature’s copyright management information.

156. On July 7, 2010, Xinhua News Agency posted to its website a feature that republished one of the images from the Third Herald Protected Work that appeared in the *Daily Mail* (the “Third Herald Infringing Work.”) *See* Exhibit “58.”

157. That infringing publication removed the copyright management information from the image that appeared in the *Daily Mail*.

158. The infringed image from the Third Herald Infringing Work was copied to and resides on Xinhua News Agency's own server. *See* Exhibit "59."

159. The First, Second, Third and Fourth Herald Infringing Works were all still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

160. Neither Mr. Werner, nor his licensing agent, Incredible Features, nor Mr. Werner's former licensing agent, Barcroft Media, ever granted Xinhua News Agency any license to copy the First, Second, or Third Herald Protected Works.

**Infringement of Werner's FemSkin Images**  
**(One Registration; Twelve Images Infringed; Twelve CMI Removals)**

161. In or about March, 2014, Mr. Werner created a photo feature about a mother-and-son family business that manufactures full-body rubber female bodysuits purchased by men wishing to present as female dolls.

162. Mr. Werner registered his work with the Copyright Office on March 12, 2014 as VAu 1-165-412 (the "FemSkin Protected Work"). *See* Exhibit "60."

163. Twelve of the photos in the FemSkin Protected Work were published on July 4, 2014 in the *Daily Mail*, with copyright management information inscribed in the images. *See* Exhibit "61."

164. On July 7, 2014, Xinhua News Agency posted to its website a feature that republished copies of 12 of Mr. Werner's images from the FemSkin Protected Work (the "FemSkin Infringing Work.") *See* Exhibit "62."

165. On information and belief, Xinhua copied the FemSkin images from the *Daily Mail*.

166. Xinhua republished the 12 images from the FemSkin Protected Work with Mr. Werner's copyright management information removed.

167. The FemSkin Infringing Work was still displayed on Xinhua News Agency's website on September 30, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

168. The infringed images from the FemSkin Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "63."

169. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the FemSkin Protected Work.

**Infringement of Werner's Triplets Convention**  
**(One Registration; Thirteen Images Infringed; Thirteen CMI Removals)**

170. In or about July, 2013, Mr. Werner created a photo feature about an international convention of triplet siblings.

171. Mr. Werner registered his work with the Copyright Office on July 18, 2013 as VA 1-905-238 (the "Triplets Convention Protected Work"). *See* certificate and relevant deposits at Exhibit "64."

172. Thirteen of the photos in the Triplets Convention Protected Work were published on July 19, 2013 in the *Daily Mail*, with copyright management information inscribed in the images. *See* Exhibit "65."

173. On July 23, 2013, Xinhua News Agency posted to its English language website a feature that published copies of all 13 images from the Triplets Convention Protected Work that had appeared in the *Daily Mail* (the "Triplets Convention Infringing Work"). *See* Exhibit "66."

174. On information and belief, Xinhua News Agency copied the Triplets Convention images from the *Daily Mail* or from Huanqui.com which published the images on July 20, 2013.

175. Xinhua republished 13 of Mr. Werner's Triplets Convention photos with Mr. Werner's copyright management information removed.

176. In its place, Xinhua inserted false copyright management information crediting "huanqiu.com" as the author of Mr. Werner's images. *See* paragraph 44 above.

177. The Triplets Convention Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

178. The infringed images from the Triplets Convention Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "67."

179. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Triplets Convention Protected Work.

**Infringement of Werner's Wingwalker Images**  
**(One Registration; Thirteen Images Infringed; Thirteen CMI Removals)**

180. In 2012 Mr. Werner created works depicting Ashley Battles, a performer who walks on the wings of small aircraft in flight.

181. Mr. Werner registered his work with the Copyright Office on March 19, 2015 as VA 1-952-588 (the "Wingwalker Protected Work"). *See* certificate and relevant deposits at Exhibit "68".

182. The Wingwalker photos were licensed to magazines, newspapers and/or TV outlets around the world, including *The Telegraph* (U.K.), *The Telegraph Online* (U.K.), *The Daily Mail* (U.K.), *The Times* (U.K.), *Swisscom* (Germany), *Microsoft MSN* (U.K.), and *Weser Kurier* (Germany).

183. Fourteen of the photos in the Wingwalker Protected Work were published on July 8, 2013 in the *Daily Mail*, with copyright management information inscribed in the images (the 15<sup>th</sup> is not owned by Mr. Werner). *See* Exhibit “69.”

184. On July 10, 2013, Xinhua News Agency posted to its website a feature that published copies of 13 images from the Wingwalker Protected Work (the “Wingwalker Infringing Work.”) *See* Exhibit “70.”

185. On information and belief, Xinhua News Agency copied the Wingwalker images from the *Daily Mail*.

186. Xinhua republished 13 of Mr. Werner’s Wingwalker photos with Mr. Werner’s copyright management information removed.

187. In its place, Xinhua inserted false copyright management information crediting “huanqiu.com” as the author of Mr. Werner’s images.

188. The Wingwalker Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

189. The infringed images from the Wingwalker Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “71.”

190. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Wingwalker Protected Work.

**Infringement of Werner’s Giant Woman Images**  
**(One Registration; Two Images Infringed; Two CMI Removals)**

191. In 2009 Mr. Werner created works depicting a woman, Tanya Angus, who never stopped growing because her brain never stopped producing growth hormones.

192. Mr. Werner registered his work with the Copyright Office on June 20, 2009 as VAu 991656 (the “Tanya Angus Protected Work”). *See* Exhibit “72.”

193. Two of the photos in the Giant Woman Protected Work were published by the *Mirror* on July 23, 2009, with copyright management information in the gutter credit. *See* Exhibit “73.”

194. On July 25, 2009, Xinhua News Agency posted to its website a feature that published copies of two images from the Tanya Angus Protected Work (the “Tanya Angus Infringing Work.”) *See* Exhibit “74.”

195. On information and belief, Xinhua News Agency copied the Tanya Angus images from the *Mirror*.

196. Xinhua republished two of Mr. Werner’s Tanya Angus photos with Mr. Werner’s copyright management information removed. In place of the gutter credit in the *Mirror*, Xinhua News Agency substituted Ms. Angus’s name.

197. The Tanya Angus Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

198. The infringed images from the Tanya Angus Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “75.”

199. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Tanya Angus Protected Work.

**Infringement of Werner’s Dillie the Deer Images**  
**(One Registration; Four Images Infringed; Four CMI Removals)**

200. In or around December, 2009 Mr. Werner created works depicting a tame deer that lived with a family in its house.

201. Mr. Werner registered his work with the Copyright Office on December 21, 2009 as VAu 1-009-693 (the “Dillie the Deer Protected Work”). *See* record of registration and relevant deposits at Exhibit “76.”

202. Four of the photos in the Dillie the Deer Protected Work were published by the *Daily Mail* on January 14, 2010, with copyright management information inscribed in the images. *See* Exhibit “77.”

203. On January 15, 2010, Xinhua News Agency posted to its website a feature that published copies of two images from the Dillie the Deer Protected Work (the “Dillie the Deer Infringing Work.”) *See* Exhibit “78.”

204. On information and belief, Xinhua News Agency copied the Dillie the Deer images from the *Daily Mail*.

205. Xinhua republished two of Mr. Werner’s Dillie the Deer photos with Mr. Werner’s copyright management information removed.

206. The Dillie the Deer Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

207. The infringed images from the Dillie the Deer Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “79.”

208. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Dillie the Deer Protected Work.

**Infringement of Werner's Amputee Body Builder Images**  
**(Two Registrations; Twelve Images Infringed)**

209. In or about May 24, 2013 Mr. Werner travelled to Arizona, then on October 24, 2013, he travelled to South Carolina, to create a photo feature about Barbie Thomas, a competitive bodybuilder and mother who lost both arms at the shoulder in an accident involving an electrical transformer when she was a two-year-old child.

210. Mr. Werner registered his first set of works depicting Thomas's home life and training with the Copyright Office on January 24, 2014 as VAu 1-157-621. *See* Exhibit "80." On May 25, 2014 he registered his second set of works depicting her participation in competitions as VAu 1-174-486. *See* Exhibit "81." (The combined registered images of Barbie Thomas are the "First and Second Barbie Thomas Protected Works".)

211. The First and Second Barbie Thomas Protected Works were licensed to magazines, newspapers and/or TV outlets around the world, including the *Daily Mail*, the *Mirror*, and *The Sun Online*.

212. Twelve of the photos in the First and Second Barbie Thomas Protected Works were published by the *Daily Mail* on May 26, 2014, with copyright management information inscribed in the images. *See* Exhibit "82."

213. On May 27, 2014, Xinhua News Agency posted to its website a feature that published copies of twelve images from the First and Second Barbie Thomas Protected Works (the "Barbie Thomas Infringing Work.") *See* Exhibit "83."

214. Mr. Werner's copyright management information from the *Daily Mail* appears in the Barbie Thomas Infringing Work, indicating the source of the stolen images.



215. The Barbie Thomas Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

216. The infringed images from the First and Second Barbie Thomas Protected Works were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "84."

217. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the First and Second Barbie Thomas Protected Works.

**Infringement of Werner's Conjoined Twins Images**  
**(One Registration; Four Images Infringed)**

218. In 2009 Mr. Werner created works depicting the family life of two conjoined twins who share a brain and can see out of each other's eyes.

219. Mr. Werner registered his work with the Copyright Office on June 16, 2010 as VAu 1-029-705 (the "Conjoined Twins Protected Work"). *See* certificate and relevant deposits at Exhibit "85."

220. Four of the photos in the Conjoined Twins Protected Work were published by the *Daily Mail* on November 21, 2010, with copyright management information inscribed in two of the four images. *See* Exhibit "86."

221. On November 23, 2010, Xinhua News Agency posted to its website a feature that published copies of all four images from the Conjoined Twins Protected Work (the "Conjoined Twins Infringing Work.") *See* Exhibit "87."

222. Mr. Werner's copyright management information from the *Daily Mail* appears in the Conjoined Twins Infringing Work, indicating the source of the stolen images.

223. The Conjoined Twins Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

224. The infringed images from the Conjoined Twins Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "88."

225. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Conjoined Twins Protected Work.

**Infringement of Mr. Werner, Mr. Wolff, and Mrs. Wolff's Gay Rodeo Images**  
**(Five Registrations; Ten Images Infringed)**

226. In October, 2014, Brian Wolff, Judy Wolff, and Jeffery Werner took photographs of a gay rodeo event in Dallas, Texas.

227. Mr. Wolff registered his work with the Copyright Office on October 31, 2014 as VAu 1-189-549 ("Rodeo 1 Protected Work"). *See* Exhibit "89."

228. Mr. Werner registered his work with the Copyright Office on October 31, 2014 as VAu 1-189-539 ("Rodeo 2 Protected Work"). *See* certificate and relevant deposits at Exhibit "90."

229. In September, 2014, Brian Wolff and Judy Wolff took photographs of a gay rodeo event in northern California.

230. Mr. Wolff registered his work with the Copyright Office on November 7, 2014 as VAu 1-190-119 ("Rodeo 3 Protected Work"). *See* certificate and relevant deposits at Exhibit "91."

231. Mrs. Wolf registered her work with the Copyright Office on November 7, 2014 as VAu 1-190-120 ("Rodeo 4 Protected Work"). *See* certificate and relevant deposits at Exhibit "92."

232. In November, 2014, Mr. Werner returned to Dallas to take additional photographs.

233. Mr. Werner registered his work with the Copyright Office on December 19, 2014 as V Au 1-196-266 (“Rodeo 5 Protected Work”). *See* certificate and relevant deposits at Exhibit “93.”

234. Photos from the four Rodeo Protected Works were published in the *Daily Mail Online* on October 13, 2015, with copyright management information inscribed in each image owned by Plaintiffs. *See* Exhibit “94.”

235. On October 14, 2015, Xinhua News Agency posted to its website a feature that republished copies of images from the *Daily Mail* of which Plaintiffs allege infringement claims for ten images drawn from five registered works (the “Rodeo Infringing Work”). *See* Exhibit “95.” A tabulation of the infringements is:

<b>Xinhua Web Page Numbers</b>	<b>Copyright Owner</b>	<b>Registration No.</b>
1/19	Jeffery R. Werner	VAu 1-189-539
2/19	Judy S. Wolff	VAu 1-190-120
3/19	Brian Wolff	VAu 1-190-119
5/19	Brian Wolff	VAu 1-189-549
7/19	Jeffery R. Werner	V Au 1-196-266
8/19	Jeffery R. Werner	V Au 1-196-266
10/19	Jeffery R. Werner	VAu 1-189-539
12/19	Brian Wolff	VAu 1-190-119
13/19	Brian Wolff	VAu 1-189-549
19/19	Jeffery R. Werner	VAu 1-189-539

236. Incredible Features’ copyright management information from the *Daily Mail* appears in the Rodeo Infringing Work, indicating the source of the stolen images.

237. The Rodeo Infringing Work was still displayed on Xinhua News Agency's website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

238. The infringed images from the Rodeo Protected Work were copied to and reside on Xinhua News Agency's own server. *See* Exhibit "96."

239. Neither Mr. Werner, nor Brian Wolff, nor Judy Wolff, or their licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Rodeo Protected Work.

**Infringement of Mr. Werner's Human Carpet Images**  
**(One Anticipated Future Amended Claim for Post-Infringement Registration;**  
**Three Images Infringed; Three CMI Removals)**

240. In August, 2013 Mr. Werner created a feature works depicting the "Human Carpet": a middle-aged man who seeks women to trample him while he is rolled in a carpet. Mr. Werner travelled to New York and hired models to depict the Human Carpet's obsession.

241. Mr. Werner submitted his work for registration with the Copyright Office on January 12, 2017 (the "Human Carpet Protected Work"). *See* confirmation of receipt of deposit with deposits for infringed images at Exhibit "97." While this pending registration is not presently actionable pending registration, the defendant's infringement described below is evidence of willfulness. Moreover, Plaintiff anticipates amending its claim when the registration is certified.

242. Three of the photos in the Human Carpet Protected Work were published by the *Daily Mail* on August 21, 2013, with copyright management information inscribed in the images. *See* Exhibit "98."

243. On August 23, 2013, Xinhua News Agency posted to its website a feature that published copies of all three images from the Human Carpet Protected Work (the “Human Carpet Infringing Work.”) *See* Exhibit “99.”

244. Xinhua republished Mr. Werner’s Human Carpet photos with Mr. Werner’s copyright management information removed.

245. The Human Carpet Infringing Work was still displayed on Xinhua News Agency’s website on December 22, 2016 with continually-updated advertisements or promotional links to other Xinhuanet articles.

246. The infringed images from the Human Carpet Protected Work were copied to and reside on Xinhua News Agency’s own server. *See* Exhibit “100.”

247. Neither Mr. Werner nor his licensing agent, Incredible Features, ever granted Xinhua News Agency any license to copy the Human Carpet Protected Work.

**Effect on Authors of Xinhua’s Business Plan  
Predicated Upon Routine Theft of Intellectual Property**

248. Apart from the particular injury to Mr. Werner, Mr. Wolff, Mrs. Wolff, and Incredible Features, Inc., Xinhua News Agency’s practice of intellectual property piracy threatens to diminish the market for photographic and other creative works. If authors whose business survival depends upon licensing their works find themselves in competition with their own works published by internet content pirates who simply misappropriate and publish it for commercial exploitation, the authors and their businesses cannot succeed. Very few authors will be able to produce professional-grade content by investing time, effort and money in creating works that will be almost instantly stolen by content pirates, and other websites will be encouraged to likewise acquire their stock in trade by theft as they cannot pay for licenses and

compete with sites that do not do so. That is precisely the misconduct that the Copyright Act was enacted to deter.

**COUNT I**  
**(Copyright Infringement, 17 U.S.C. § 501)**

249. Plaintiffs incorporate by reference all the allegations of paragraphs 1 through 249.

250. Plaintiffs are the authors and copyright owner of the Protected Work.

251. Defendant has reproduced, displayed, distributed or otherwise copied 26 separate works consisting of 133 images without Plaintiffs' license or authorization.

252. The actions and conduct of Defendant as described above infringed upon the exclusive rights granted to photographers under 17 U.S.C.A. 106 to display, reproduce and distribute their work to the public. Such actions and conduct constitute copyright infringement under the Copyright Act of 1976, 17 U.S.C.A. 501.

253. Plaintiffs have complied in all respects with 17 U.S.C. §§ 101 et seq., and secured and registered the exclusive rights and privileges in and to the copyrights of 25 of the above-referenced works pursuant to 17 U.S.C. § 408. They have a pending registration for the 26<sup>th</sup> work which they expect to add to their claim upon certification.

254. Having registered their copyrights in 24 of the works prior to or within three months of the infringements thereof, Plaintiffs are entitled to elect statutory damages under 17 USC § 412 and § 504(c), in an amount of not less than \$750 or more than \$30,000 per infringement of each of the 24 works registered prior to Xinhua News Agency's infringements.

255. Defendant's infringements were systematic and intentional. On information and belief, Xinhua News Agency substantially operated, at all relevant times, as a pirate website. Its business model was, on information and belief, predicated on theft and unauthorized commercial exploitation of intellectual property owned by others. Like clock-work, it stole Plaintiffs' images

within days of their original authorized publication, usually published them with copyright management information removed, and willfully destroyed Plaintiffs' ability to syndicate their works to paying licensees.

256. Because Defendant's copyright infringement was willful, and because Plaintiffs registered their copyrights, they are entitled to enhanced statutory damages pursuant to 17 U.S. Code § 504(c)(2) in the sum of up to one hundred fifty thousand dollars (\$150,000) for each of the 24 qualifying infringed works that were registered prior to the infringements.

257. In the alternative, Plaintiffs are entitled to elect recovery of their actual damages and Defendant's profits attributable to the infringement of the 25 registered works, pursuant to 17 U.S.C. 504(b).

258. Within the time permitted by law, Defendants will make their elections between actual damages and profit disgorgement, or statutory damages.

259. Pre-infringement registration of 24 of the works also entitles Plaintiffs to seek an award of attorney's fees pursuant to 17 USC § 412 and § 505.

**COUNT II**  
**(Vicarious and/or Contributory Copyright Infringement)**

260. Plaintiffs incorporate by reference all the allegations of paragraphs 1 through 260.

261. On information and belief, Defendant knowingly induced, participated in, aided and abetted in, and profited from the illegal reproduction and distribution of the Protected Work.

262. On information and belief, Xinhua News Agency, if it was not a direct infringer, knew or should have known of the infringing activity.

263. On information and belief, Xinhua News Agency provided the site and means for such infringing activity to occur, and it encouraged Xinhua News Agency's employees and

representatives to discover and post to its website pirated content that it knew was the property of others.

264. Defendant obtained direct and indirect profits it would not otherwise have realized but for the infringement of Defendants' rights in the Protected Work.

265. As a direct and proximate result of said acts of vicarious and contributory infringement, Plaintiffs have suffered substantial damages in an amount to be proven at trial, as well as additional and special damages in an amount to be proven at trial.

266. Plaintiffs are entitled to actual damages and disgorgement of direct and indirect profits realized by Defendant in an amount to be proven at trial or, at their election, statutory damages.

267. Because Defendant's copyright infringement was willful, Plaintiffs are entitled to enhanced statutory damages in the sum of up to \$150,000 per each of the 24 qualifying infringed works.

268. Within the time permitted by law, Plaintiffs will make their election between actual damages and profit disgorgement, or statutory damages, depending upon which is larger.

269. Plaintiffs are further entitled to a discretionary award of their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

**COUNT III**  
**(Violation of Digital Millennium Copyright Act)**

270. Plaintiffs incorporate by reference all the allegations of paragraphs 1 through 270.

271. On information and belief, Defendant intentionally removed or altered copyright management information ("CMI") from 85 registered images in violation of 17 U.S.C. § 1202(b) in order to induce, enable, facilitate, or conceal infringement in violation of 17 U.S.C.A. § 1202.



272. It removed CMI from an additional three images for which registration is pending. Plaintiff anticipates amending this Complaint to add those additional three claims for CMI removal.

273. In the alternative, on information and belief, Defendant distributed, imported for distribution, and published works or copies of works knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, in violation of 17 U.S.C. § 1202(b)(3).

274. Defendant had reasonable grounds to know that its misconduct would induce, enable, facilitate or conceal infringement.

275. On information and belief, Defendant's actions were knowing, willful, reckless, and so warrant enhanced damages and penalties.

276. Plaintiffs are entitled to statutory damages of from \$2,500 to \$25,000 per each of the 85 violations per 17 U.S. Code § 1203(c)(3)(B).

277. Plaintiffs are further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(4) and (5).

### **RELIEF**

WHEREFORE, Plaintiffs request judgment against the Defendants for:

1. A finding that Defendant infringed Plaintiffs' copyright interests in the Protected Work by copying and publishing it for commercial purposes without any license or consent;
2. An award of actual damages and disgorgement of all of Xinhua News Agency's profits attributable to the infringement, as provided by 17 U.S.C. §504, in an amount to be proven at trial or, in the alternative, at Plaintiffs' election, statutory damages for willful infringement pursuant to 17 U.S.C. §504(c)(1) or (2), whichever is larger;

3. An order, pursuant to 17 U.S.C. 502(a), enjoining the Defendants from any infringing use of any of Plaintiffs' works;

4. An order, pursuant to 17 U.S.C. §§ 502 and 503, impounding or enjoining Defendant to turn over to Plaintiffs all copies of the Protected Work claimed to have been made or used in violation of the exclusive right of the copyright owners; all plates, tapes, film negatives, or other articles by means of which such copies may be reproduced; and records documenting the manufacture, sale, or receipt of things involved in any such violation.

5. An award of Plaintiffs' attorney's fees and costs pursuant to 17 U.S.C. §505.

6. A finding that Defendant violated the Digital Millennium Copyright Act, 17 U.S.C. 1202, by knowingly removing Plaintiffs' CMI attached to the Protected Work;

7. An award of the actual damages, pursuant to 17 U.S.C. §1203, suffered by the Plaintiffs as a result of the violation of the Digital Millennium Copyright Act, and profits of Defendant that are attributable to the violation and are not taken into account in computing the actual damages or, in the alternative, at Plaintiff's election, statutory damages for removal of copyright management information pursuant to 17 U.S.C. §1203, whichever is larger;

8. A joint and several award of Plaintiffs' attorney's fees and costs pursuant to 17 U.S.C. §1203;

9. Pretrial interest as permitted by law; and

10. Such other relief as the Court deems just and proper.

Respectfully submitted,  
**SPECTOR GADON & ROSEN, P.C.**

By: /s/ Bruce Bellingham  
Bruce Bellingham, Esquire  
David B. Picker, Esquire  
1635 Market Street, 7th Floor  
Philadelphia, PA 19103  
(215) 241-8916  
[dpicker@lawsgr.com](mailto:dpicker@lawsgr.com)  
[bbellingham@lawsgr.com](mailto:bbellingham@lawsgr.com)  
*Attorneys for Plaintiffs*

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